



HOUSE COMMITTEE ON LAND DEVELOPMENT (LRC) (2013)
JANUARY 30, 2014
Room 421

The House Committee on Land Development (LRC) (2013) met on Thursday, January 30 at 1:00 p.m. The meeting was held in Room 421 LOB. Members present were: Representatives Mark Brody, Mike Hager, Pat McElraft, Chuck McGrady, John Torbett, and Andy Wells.

Representative John Torbett presided. Representative Torbett welcomed everyone and turned the meeting over the Bill Patterson, Committee Counsel who went over the charge of the committee. Representative Torbett gave the background of the reason for this committee. He became aware of a senior living subdivision called Magnolia Place in Lowell, North Carolina that was brought to his attention as a county commissioner several years ago as to the problems they were encountering with the uncompleted infrastructure of a retaining wall in the subdivision and due to their situation were unable to enter into legal involvement and were caught in a catch 22. This is not a committee to lay blame, this is a committee to understand what happened and an effort to define what happened to the point that that type situation does not happen again to the citizens of North Carolina. It is fortunate that this is no prevalent throughout North Carolina and perhaps by the conclusion that this committee reaches, we can put steps in or add clarity to the current language or laws on the books that perhaps this just wouldn't happen in North Carolina again. Next pictures of the subdivision were shown. (Please see attached and on committee website).

Representative Mark Brody addressed the committee saying that Magnolia Place was the catalyst for the study, but the study itself is on land development. This is going to include a lot of things that are going to be needed to address with Magnolia Place, but North Carolina is growing again, and the basic land development policies of North Carolina have been formulated and actually have become entrenched over some very prosperous years and high growth years, which make it significant because a lot of things going into land development, when we begin to address an issue like this or others, a lot of things are put in place that can become costly, but yet in a high growth prosperity time, they are usually absorbed. What we are seeing now, because North Carolina is starting to grow again, is that the developers as well as the lenders are starting to watch their pennies and it has become time to, as we go through this process, address a lot of the other issues in land development that may have become redundant, unnecessary, and even bureaucratic. I believe the other issues in the charge of this committee are going to become apparent when we dig a little further into Magnolia Place, but I think as we go through the meetings, we'll start getting presentations on other aspects of land development also that I hope will make North Carolina a very prosperous and efficient state to build in.



Jeff Britt, Robeson County building code Administrator, President North Carolina Building Inspectors Association, President ICC Region VIII presented an overview of steps undertaken by local governments in permitting of a subdivision (please see attached and on committee website). Representative McElraft asked how you would prevent something like this from happening. Mr. Britt answered that it should never happen. Anytime a permit is applied for, if land is disturbed more than an acre, according to the DENR requirement, as a building official, I charge the field staff when they visit the site, they should look to see if those measures are in place. When the field staff, the assigned inspector, when he goes out there, right there during the footing and possibly during even the foundation inspection. By the time the building project gets to that point, all the soil and sediment and erosion control measures required by DENR letters and approvals should be in place. Representative Wells asked if he had a badge and when he was on site for final inspection, is there anybody in that inspection process that has the ability to override your decision. Mr. Britt answered yes he had a badge and that there was no one who could override his decision. Would you say you don't get a permit to occupy until it is in compliance? That decision is the building official's decision to make, whether certificate of occupancy or certificate of compliance is issued. Isn't there something in the building code about having plans of some type, not having plans? The building code talks about walls being built to minimum heights, requires engineering and actually they are supposed to be permitted to be built. So we've got noncompliance. A permit for a retaining wall is required in Robeson County. Would you consider that a compliant retaining wall? No. If one of your inspectors had issued a certificate to occupy, based on what we've seen today, what would you do? I would ask him not to and the violation would have occurred a long time before it got to the point that the owner was ready to close the loan, get their COC and actually start occupying it. Our projects are not allowed to progress the point that they are being upon without the measures. We don't allow them to build a home if the street is not extended beyond that point. We deal with streets, not retaining walls mostly. Chairman Brody asked in your capacity as the representative for inspectors, you had used the phrase responsibility for field compliance or something like that. Can you define what that responsibility is; are you responsible for going out there and looking, and being accountable for what you saw? The responsibilities of the building official are specified in the statutes. The state building code, predominantly, and any other state applicable laws that is associated with development of properties. If you don't have the resources for a problem like this, would that relieve you of the responsibility? Once the permit is issued and the fee is paid you assume responsibility. Representative Hager asked regarding this example, do you have a planning board? Yes. The planning board would be where this issue, I don't see this as much as a building structure as I do a land development issue. You may not would have handled it in a building inspection issue; it should have been fixed well before you got to the building situation? Yes. I see DENR issues with erosion control. We may not find a violation in the building code. Only, as a building official, you might consider that structure, as its build to be considered unsafe. Representative Torbett asked, where would a common element of a development that abuts the real properties of these individuals, as part of that development, this retaining wall would have been a common element, crosses more than one person's property? Is it clear to you that either do have some say in that's built right or not, or is it out of your authority to say whether that's build right? Requiring it to be engineered design, that's the safeguard that is in place now. The local building official has the responsibility of ensuring that



that retaining wall is build according to the engineers design. Is there a time when there is a go or no go. Do they have to have that installed before any construction begins? Before a permit would be issued for any one of these single family dwellings, that retaining wall would have had to have been built and complete. Mr. Britt, on behalf of the North Carolina Builders Association, legislation in the past years has passed and we would like to welcome any opportunity to sit down with any legislator when it comes to controversial code issues along with the home builders association. We're seeing examples of these things occurring that may be life threatening to the occupants.

William E. Toby Vinson, Jr., PE, CPESC, CFM, Acting Section Chief/Chief Engineer, Division of Energy, Mineral and Land Resources – Land Quality Section, NC Department of Environment and Natural Resources presented NCDENR Regulatory Actions Involving Magnolia Place Townhomes (please see attached and on committee website). Representative McElraft asked in the site plan, was the retaining wall part of the sedimentation control. The retaining wall was shown in plan view as part of the overall plan provided. Whose responsibility was it to see that that was built correctly? That would be under the county. So the county should not have allowed those houses to be built until they had that retaining wall properly constructed. I can't answer that, because I don't enforce those regulations, as well as different municipalities may have different ordinances that might be stricter than the state code. It would depend on if the retaining wall were on the property that the home were on, if there was separation between common property and the home property, they would not hold another property up to construct, build, and allow CO on a separate property. There are a lot of it depends on that. Representative Hager asked, the retaining wall, was it stamped by a professional engineer. The copy that we have that was approved by the county was. The issues that may at place, in this particular case, I haven't to the site, but I have seen the pictures, the retaining wall may not have been completed. The retaining wall is not going to the top of the hill, correct? In general, what you might see is the retaining wall, if it was set as a certain height, anything behind it would have to be sloped back at an angle that could be held by vegetation. Representative McElraft asked if the retaining wall was considered sedimentation control for that property. What the retaining wall is there is the stabilization effort for a vertical wall of earth. It's a wall put up to stabilize and hold that vertical section of earth instead of the slop being kicked back at a slope that could be handled and stabilized by vegetative cover. In this particular case, it looks to me like they put the retaining wall in to allow for these homes to have back yards. Had they not put the retaining wall in, the slope would have come down and probably been within 3 or 4 feet of their home. So that was a decision made by the developer and the design engineer for space. Representative McElraft asked why would anyone ever consider allowing the houses to be built before that was completed and inspected and ready to go? I can't speak for the building code officials that oversaw this particular site, all I can provide is conjecture, in that if the retaining wall is not on the property that the home is on, that is 2 separate properties and they are probably looking at them individually. They are going to hold the developer responsible for the common are and the homeowner responsible for what's on his property. Representative Hager discussed that by sitting on a planning board he would have required the roads to be done, the infrastructure done, the retaining wall done or bonded. Representative Brody asked is the wood retaining that we saw, that's the one that was sealed by the engineer, or was there a different wall. As far as I



know what was put in was probably an attempt to follow the plan. Representative Brody asked that there may be an actual retaining wall plan out there that is completely different than this one. On the financial responsibility, I've filled out a bunch of those, and don't you require a personal guarantee, or does the corporation guarantee suffice? As far as the information provided, we have to have the owner of the property, as well as the financial responsible party of the party that is doing the work, that is in financial control of the project. So, you would then require in addition to corporate, you actually require a personal financial responsibility.

We have to have a person sign it. It can be a registered agent for the owner. Then there is no personal guarantee of the financial responsibility? The project started a long time ago, once the ownership changed, the new laws became in effect? The laws been effective since 1973. We have gone through and exhausted all of our procedures at this time dealing with the lien on the property. Before this property can change hands, that lien has got to be fulfilled and they will have to go through the attorney general's office and deal with a Mr. Phillip Reynolds to get this penalty pain, however, when this penalty is paid it will go toward the penalty fund and is not available for help or assistance with whatever needs to be done on the site. Representative Wells asked the chair regarding the time frame over which the sales of these units took place. I can't give you a year on the first sale; I can get you that information for you. The last sale was within the last 12 to 14 months. Certificates of occupancy were released and people are living in the last 2 units. What is the history of certificates of completion? I will get that information. Some of the answers to county participation in development, I'm hoping we are going to have representation at our next meeting at the county where this project happened to get insight from the county's perspective. Bill Patterson, staff counsel, gave the information that the earliest one was in August of 2008. Representative Wells asked if Gaston County came under the Mooresville office. Yes. The county has a local program now. At the time this project started, they did not have a local program. When their local program came into being, they elected not to take this project over because it was already having issues and they decided to leave it with the agency that started with it to finish it. Representative Wells asked regarding the Mooresville office, they requested that the owner do something? I've never gotten a complaint in those terms. The problem started on this project in 2000, based on your recollection. They let it go on for 8 years and based on your presentation they got serious in the spring of 2008? When I say they were in and out of compliance in 2000, it could have been a particular instance where a silt fence had not been installed and they got it corrected. As far as reaching a point where there was an issue, I think that the office acted accordingly in regard to the types of noncompliance issues or violations that might have been on site. In April of 2008, DENR knew there was a problem and after that certificates of occupancy were issued. Did DENR communicate with county officials when these types of things are going on? All of our letters and reports go to the financially responsible party. There is nothing in place to have DENR let the local government officials know that there is an ongoing problem, when you are both working on the same project. No. Representative Wells stated my concern is that in April 2008 there was conversation between DENR and the owner saying get the wall built, and 3 years later there were no fines issued. What's happening there is you have measures that need to go in, but you may or may not have any offsite sediment occurring.



Representative Torbett stated that earlier Representative Hager brought up something about bonding, and Representative Brody brought to my attention, is there a gentleman by the name of Mr. Poindexter present? It is my understanding you have knowledge regarding bonds and was asked to address the committee. Constantine Poindexter of Surety One spoke to the committee regarding his company. They are licensed as a managing general agent and surety underwriter in all 50 states. I have 19 years of experience in surety and fidelity bonding area. Representative McElraft asked if most cities or counties in the state require bonding for their subdivision. It's really all over the board. There are laws that require bonding for certain things. Representative Hager asked if counties and municipalities requiring bonding for certain levels of subdivisions, would that push people out of the market. Subdivision specific bonds are difficult obligations to underwrite and they have nationally a very high breach rate and a very high loss rate. Surety companies are reluctant to underwrite subdivision bonds. Representative Hager asked therefore, because they are risky, they become more costly? Not the cost particularly, but the difficulty for qualifying. Representative Hager asked do you see common elements for subdivision bonding being mostly infrastructure, example, power, water, roads, and retaining walls. No. Representative Brody asked what gets bonded. Do they separate roads as necessary infrastructure and then a retaining wall, which may not be necessary infrastructure, but it is something that probably is needed, and then the amenities, how does that all connect. The majority of the subdivision bond obligations include curbs, gutters, retaining walls, erosion control, culverts, anything that would be common element. Representative McGrady asked in respect to Magnolia Place, there was not bond in place? No bond in place for a retaining wall. All counties have different requirements and this whole issue has been subject to a lot of litigation recently in Henderson County. There are a lot of questions of what the bond can be used for. Representative Hager stated that in Rutherford County is it our understanding that the bonds can be used only for what they were initially charted for.

Representative Torbett reminded committee members that February 27th, 1pm until 5pm the meeting will be held in Lowell which is a suburb of Gastonia. We will send you information. I'd like to ask if any members have suggestions of people who might come and speak that would be of benefit. We will either decide to do nothing, decide to alter, and/or modify. But there are 2 things I want to be specific on; I want the committee to play a major role in this, as well as the development and building community as well. This is not a finger pointing exercise, this is how can we effectively address concerns and needs of citizens of North Carolina, through land development, as well as, make sure that we don't impede growth within those 2 industries.

There being no further business, the meeting adjourned at 2:40 p.m.

Representative John Torbett
Presiding



Viddia Torbett, Committee Clerk